

Conference Committee Training

Wednesday, September 27, 2017

by Juli Lucky

Today's presentation focuses on "substantive" bill conference committees – not budget bill conference committees. The goals of this presentation are to familiarize staff with the process and provide guidance, based on my years of experience, for staffing a CC chair.

BASIC RULES:

Conference Committees are governed by Uniform Rule 42. I previously partnered with Legal Services to provide training at beginning of session on Rule 42 and some basics regarding CCs. Materials are posted on their website at:

http://intranet.akleg.gov/docs/legal/legal_services_training_for_leg_staff_powerpoint_2017.pdf

How does a CC differ from a regular committee?

- A Conference Committee is actually two separate committees. Therefore, motions must pass by a majority vote (2) of both houses.
- Since it is two committees, it has two chairs. While the chair from the house of origin usually presides over the committee, the two houses actually have equal authority. UR 42(a) states that the committee meets when "mutually agreeable" to its members.
- Notice requirement for conference committees in UR 23(g); "reasonable notice under the circumstances."
- Rules are strict regarding "conferenceable" items and acceptable amendments.
- The Conference Committee report, which is a Conference CS, cannot be amended on the floor and must be adopted by a majority vote in each body. If the committee cannot agree upon a report or if the report is not adopted by both houses, a new conference committee would have to be appointed with different members.
- Public testimony is not required and is generally not taken, though invited testimony has been taken.
- UR 42(c) states: "The report on an appropriation bill of a Conference Committee, a Conference Committee with limited powers of free conference, or a Free Conference Committee may not be voted on by the house until at least 24 hours after the report is duplicated and delivered to the chief clerk or secretary of the house for distribution to each member."

Title changes – the rules on title changes in a conference committee are similar to the rule for title changes in "the other house" – the title cannot be changed except for a clerical or technical change. Therefore, a title change resolution may be required. Generally, if the "other house" changed the title, a resolution was already drafted and passed by that body – it doesn't have to be passed again by that body. However, the house of origin will likely have to vote on the title change resolution when the conference report is adopted.

BREAKING THE RULES:

The Uniform Rules are a set of rules that are accepted and agreed upon by both bodies to govern our process. What happens if we don't follow the rules? While some rules are based on Constitutional or statutory requirements that must be followed, the real consequence of not following the process outlined in the Uniform Rules is setting precedent.

If the action is not unconstitutional or illegal, it is not likely that a court would overturn a bill because we didn't follow our own internal rules. However, just because it's legal doesn't mean it's the right thing to do. There is a process for suspending the rules outlined in URs 49(a)(3) and 54. While it has become almost common practice to waive certain rules, such as the 24 hour rule, it's not guaranteed. A member could object and a 2/3 vote would be needed.

Even if you have the votes, I encourage you to think about the consequences of setting precedent. Try to determine why the rule exists – what process or group is it protecting? How does it help? Who does it hurt/disenfranchise? Can we achieve the goals without suspending the rules? If not, how can we suspend the fewest rules or follow the intent of the rules and still accomplish the goals of the conference committee? How can the suspension/waiver be clearly explained so that the precedent is narrow and easy for members to understand?

CONFERENCE COMMITTEE POWERS:

There are three types of conference committees:

1. Conference Committee
2. Conference Committee with Limited Powers of Free Conference
3. Free Conference Committee

1. Conference Committee – multiple choice.

UR 42(a): If the committee reaches agreement on previously adopted amendments to a bill adopted by either house, the committee then submits an identical report to each house.

A regular or basic conference committee is pretty simple – you can choose between conferenceable sections of the house and senate bills.

To clarify, the following items are NOT conferenceable:

- ✗ Sections that are identical in both bills – must be included verbatim.
- ✗ Sections that did not appear in either bill – cannot be added.

Therefore, a report from a conference committee without any additional powers:

- ♦ Must include all sections that were identical in both bills.
- ✗ Cannot include any sections that did not appear in either bill.
- ♦ Can choose between house or senate language if a section was different in the final bills OR include a section that was in one bill but not in the other. The entire bill section as it appeared in one of the bills must be included verbatim.

2. Conference Committee with Limited Powers of Free Conference – it's complicated.

UR 42(a): If the members of the Conference Committee cannot agree on amendments, or if one or both houses refuses to adopt the committee report, the Conference Committee submits an identical written report to each house listing the specific points of disagreement for which the committee requests powers of free conference. The presiding officer of each house may then give limited powers of free conference only on the specific points listed.

What does this mean? A conference committee can be granted the power to amend conferenceable items. The committee requests the powers for specific sections, which must be granted by the Presiding Officers, and is limited to amending those sections.

To reiterate, the following items are NOT conferenceable:

- ✖ Sections that are identical in both bills – must be included verbatim.
- ✖ Sections that did not appear in either bill – cannot be added.

Therefore, a report from a conference committee with limited powers:

- ♦ Can choose between house or senate language if a section was different in the final bills OR include a section that was in one bill but not in the other.
- ♦ If granted powers for a particular section, can rewrite that section to enact a compromise position.

3. Free Conference Committee – choose your own adventure.

UR 42(a): If the members of a Conference Committee with limited powers of free conference cannot agree on amendments, or one or both houses refuses to adopt the committee report, it is then in order to appoint a Free Conference Committee.

UR 42(b): A Free Conference Committee is appointed in the same manner as a Conference Committee and may suggest in its report any new amendments clearly germane to the question.

A Free Conference Committee is also simple: language can be included as long as it is “germane” to the question; which has been very broadly interpreted. Basically, an FCC can rewrite the whole bill as long as it still meets the Constitutional single subject standard. A FCC report can:

- ♦ Can choose between house or senate language if a section was different in the final bills OR rewrite a section to enact a compromise position.
- ♦ Remove or rewrite sections that were identical in both bills.
- ♦ Include new language that was not in either bill.

BEST PRACTICES:

These are my opinions as a registered nonpartisan problem solver who has worked for members of both parties. In a political world, I know that these will not always be possible or practical. However, I have seen a lot of committees fall apart, almost fall apart, or move backwards (rescind actions) because these practices were not followed.

Don't rush – know your bill and try to identify a path forward. If your boss is the sponsor of the bill, encourage him or her to take a little time to speak with leadership and work out a path to a solution prior to having the conference committee appointed. You and your boss should be the experts on your bill and should know who was objecting to what and hopefully why. You might not be able to figure out all the details, but you could at least figure out if there is a compromise position that needs only limited powers. Otherwise, your boss may not end up sitting on the actual committee that crafts the compromise.

UR 42 (a) prohibits a person who serves on a conference committee from being appointed to a subsequent committee. While there have been a few high-profile bills where free conference powers were granted to the initial committee, it is not guaranteed that the body will agree to waive this rule for your boss on your bill.

Know where you're going – work it out before the meeting. Conference committee motions to request powers must be in writing and specific. A conference committee report is subject to an up or down vote on the floor and is not subject to amendment, therefore a last-minute amendment cannot be "fixed" later. For these reasons, conference committees tend to be tightly scripted. It's best to keep open communications with members and ensure that everyone is aware of the process before the meeting. The chairs can take the necessary time to create a public record of what has transpired, but, ideally, negotiations should take place prior to the meeting.

Provide a CS to all negotiators prior to final agreement on a compromise position. While we all hope that our bosses are speaking the same language and using the same terms interchangeably during negotiations, miscommunications can be construed as subterfuge in the heat of the moment. A CS allows everyone to see the changes in context and identify any technical problems or misunderstandings.

MY BOSS IS CHAIRING A CONFERENCE COMMITTEE – NOW WHAT?

Maybe you're expecting this - your bill got a "poison pill" in the other body that your boss won't accept - or maybe you're just listening to the floor session when you hear your boss get assigned to chair a committee on a bill you've never read (*or does that only happen to me?*). Conference committees can move fast – you want to be able to meet as soon as the bosses have a deal. Here are some practical steps for organizing:

1. Make sure you have a committee. I know, this sounds basic but... if the other body has not yet appointed, you don't actually have a committee to chair.
2. Check in with the Senate Secretary or Chief Clerk's office to get the official documents.
3. Get familiar with the bill and create a quick reference (comparison document or list of conferenceable items) to help others get up to speed. Don't assume that other members were appointed due to their knowledge of the bill. Identify the "conferenceable" items and stakeholders. There is no set format for these documents – think about what your committee needs to know, what other members will want to know, and how much detail is needed.
4. Identify your counterpart in the other body and touch base. While the houses may be at loggerheads and the bosses may be taking tough negotiating stances, it is up to the staff to make sure that the committee runs smoothly. Communication is key.
 - ♦ If you are producing materials on behalf of the committee, be sure that both the chairs are aware and have signed off on the documents.
 - ♦ Make sure that you both have posting rights to the committee aide document system. You may have to post something at midnight. Don't wait until your boss is waiting for something to get posted to call IT!
5. Identify and contact your records secretary – you can't have a meeting without one.
6. Make an email and phone list – include all legislators on the committee, records, the LIO (for teleconferencing), the sponsor of the bill (if it's not you), and the appropriate staff. Get cell numbers if you can.
7. Make nameplates (I find it easier to have my own than to wait for the pages to bring them), create some letterhead, and draft a meeting notice. Might as well be ready.
8. When a deal is negotiated, encourage your boss to create and distribute a draft CS to the stakeholders if possible. Create a sectional or add the bill to the comparison document, if appropriate.
9. When the committee has a path forward, draft a script and any necessary materials, such as a letter requesting limited powers or a letter requesting the committee be discharged. For either of these letters, you need to have two original copies to be signed by committee members – one for the Senate President and one for the Speaker of the House. There are templates for scripts and letters on Legal's website.

10. **Meeting prep.** For staff that has run a committee previously, meeting prep is very similar. CCs generally don't include sponsor statements or the original backup materials in the bill packets.
 - ♦ Find a time that is "mutually agreeable." Reserve a room, notice the meeting (must go to both the Senate Secretary and Chief Clerk), request teleconferencing, and arrange the records secretary (confirm what, if any, documents records will bring).
 - ♦ It will be your responsibility to create, distribute, and post any backup materials and make bill files/packets for members. A CC packet generally consists of the bills and their fiscal notes, a comparison document and/or a document outlining the conferenceable items, and either the proposed CS or amendments. I always bring hard copies to the meetings, regardless of whether an electronic file has been distributed. There should be enough copies for the committee, records, teleconferencing, and the public.
11. Confirm with your boss and the other chair what materials, if any, should be distributed with the Conference Committee Report to the other members. Make arrangements to have these distributed.
12. If the floor session is waiting on your conference committee report:
 - a. Give legal a heads up when your committee is meeting and that you'll be calling for a rush CCS as soon as the committee is done. You can ask that the CCS be delivered directly to the Senate Secretary's or Chief Clerk's office and wait for it there.
 - b. If the compromise bill is going to change the fiscal note, consider giving the Governor's Legislative Liaison's office an advance copy of the CCS or a verbal heads up about the provisions that will cause a fiscal note change and make sure someone is standing by to get the new fiscal note uploaded.
 - c. Inform your Presiding Officer's office when the meeting is over.
 - d. Go directly to the Senate Secretary or Chief Clerk's office with the signed documents and wait for your CCS.